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8 JAMES EARL HARVEY, aka Abdul O NO C-09-2463 VRW (PR)  
9 Shakur,

10 Plaintiff,

11 v

12 R DROWN, et al,

13 Defendants.

14 ORDER OF DISMISSAL

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18 Plaintiff, a prisoner at Pelican Bay State Prison  
19 ("PBSP"), has filed a pro se complaint under 42 USC section 1983  
20 alleging that PBSP officials violated his First Amendment rights by  
21 interfering with his mail delivery service. In his complaint,  
22 plaintiff identifies four claims, the first two of which he has  
23 included in a separately-filed action (see case No C-09-2353-VRW  
24 (PR)) and which he admits are unexhausted. See Doc #1 at 1-2. The  
25 third claim pertains to an incident that took place in March 2008  
26 involving a letter from plaintiff's sister that was confiscated by  
27 PBSP officials on the ground that it involved gang activity. Doc #1  
28 at 5. The fourth claim pertains to an August 19, 2008 incident

1 where PBSP officials confiscated one of his incoming pieces of mail,  
2 again on the ground that it promoted gang activity. Doc #1 at 6.  
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4 I

5 Federal courts must engage in a preliminary screening of  
6 cases in which prisoners seek redress from a governmental entity or  
7 officer or employee of a governmental entity. 28 USC § 1915A(a).  
8 The court must identify cognizable claims or dismiss the complaint,  
9 or any portion of the complaint, if the complaint "is frivolous,  
10 malicious, or fails to state a claim upon which relief may be  
11 granted," or "seeks monetary relief from a defendant who is immune  
12 from such relief." Id § 1915A(b). Pleadings filed by pro se  
13 litigants, however, must be liberally construed. Balistreri v  
14 Pacifica Police Dep't, 901 F2d 696, 699 (9th Cir 1990).

15 A

16 As an initial matter, the two claims plaintiff admits are  
17 unexhausted (claims one and two) are DISMISSED. See 42 USC § 1997e;  
18 Vaden v Summerhill, 449 F3d 1047, 1051 (9th Cir 2006) (where  
19 administrative remedies are not exhausted before the prisoner sends  
20 his complaint to the court it will be dismissed even if exhaustion  
21 is completed by the time the complaint is actually filed); McKinney  
22 v Carey, 311 F3d 1198, 1199 (9th Cir 2002).

23 B

24 In claims three and four, plaintiff alleges that PBSP  
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1 officials violated his constitutional rights by interfering with his  
2 mail delivery service, citing two isolated incidents in March 2008  
3 and on August 19, 2008.

4 Prisoners enjoy a First Amendment right to send and  
5 receive mail. See Witherow v Paff, 52 F3d 264, 265 (9th Cir 1995)  
6 (citing Thornburgh v Abbott, 490 US 401, 407 (1989)). A prison,  
7 however, may adopt regulations or practices which impinge on a  
8 prisoner's First Amendment rights as long as the regulations are  
9 "reasonably related to legitimate penological interests." See  
10 Turner v Safley, 482 US 78, 89 (1987). The Turner standard applies  
11 to regulations and practices concerning all correspondence between  
12 prisoners and to regulations concerning incoming mail received by  
13 prisoners from non-prisoners. See Thornburgh, 490 US at 413.  
14 An isolated incident of mail censorship or interference due to an  
15 "honest error" by prison officials, however, does not justify relief  
16 under section 1983, however. See Lingo v Boone, 402 F Supp 768, 773  
17 (ND Cal 1975).

18 Here, plaintiff asks the court to view the incidents  
19 complained of in claims three and four in conjunction with a lawsuit  
20 he has pending against PBSP officials for First Amendment violations  
21 based on interference with his right to send and receive mail. Doc  
22 #1 at 5; see case No C-08-2894-VRW (PR). The court declines to do  
23 so, and instead DISMISSES these claims without prejudice. Should  
24 plaintiff wish to include the March 2008 and August 19, 2008  
25 incidents in his pending complaint, case No C-08-2894 VRW (PR), he  
26 must file a motion in that case seeking a stay of proceedings and  
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1 leave of court to file an amended complaint.

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3 III

4 For the foregoing reasons, the complaint is DISMISSED.

5 The clerk is directed to terminate any pending motions as moot,  
6 enter judgment in accordance with this order and close the file.

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8 IT IS SO ORDERED.

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VAUGHN R WALKER  
United States District Chief Judge

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